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9  
10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2009-180

13 LENA MARCELLA THOMAS  
14 8729 Graves Avenue, Apt. 13A  
Santee, CA 92071

**A C C U S A T I O N**

15 Registered Nurse License No. 580298

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation  
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
22 Department of Consumer Affairs.

23 2. On or about April 27, 2001, the Board of Registered Nursing issued  
24 Registered Nurse License Number 580298 to Lena Marcella Thomas (Respondent). The  
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on April 30, 2009, unless renewed.

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4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

## STATUTORY PROVISIONS

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

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1 or in a manner dangerous or injurious to himself or herself, any other person, or  
2 the public or to the extent that such use impairs his or her ability to conduct with  
safety to the public the practice authorized by his or her license.

3 (c) Be convicted of a criminal offense involving the prescription,  
4 consumption, or self-administration of any of the substances described in  
subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
5 record pertaining to, the substances described in subdivision (a) of this section, in  
which event the record of the conviction is conclusive evidence thereof.

6 . . . .

7 8. Section 2765 of the Code states:

8 A plea or verdict of guilty or a conviction following a plea of nolo  
9 contendere made to a charge substantially related to the qualifications, functions  
and duties of a registered nurse is deemed to be a conviction within the meaning  
10 of this article. The board may order the license or certificate suspended or  
revoked, or may decline to issue a license or certificate, when the time for appeal  
11 has elapsed, or the judgment of conviction has been affirmed on appeal or when  
an order granting probation is made suspending the imposition of sentence,  
12 irrespective of a subsequent order under the provision of Section 1203.4 of the  
Penal Code allowing such person to withdraw his or her plea of guilty and to  
13 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
accusation, information, or indictment.

14 9. Section 490 of the Code provides, in pertinent part, that a board may  
15 suspend or revoke a license on the ground that the licensee has been convicted of a crime  
16 substantially related to the qualifications, functions, or duties of the business or profession for  
17 which the license was issued.

18 10. Section 492 of the Code states:

19 Notwithstanding any other provision of law, successful completion of any  
20 diversion program under the Penal Code, or successful completion of an alcohol  
and drug problem assessment program under Article 5 (commencing with section  
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit  
21 any agency established under Division 2 ([Healing Arts] commencing with  
Section 500) of this code, or any initiative act referred to in that division, from  
22 taking disciplinary action against a licensee or from denying a license for  
professional misconduct, notwithstanding that evidence of that misconduct may  
23 be recorded in a record pertaining to an arrest.

24 . . . .

25 11. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by  
27 a board within the department pursuant to law to deny an application for a license  
or to suspend or revoke a license or otherwise take disciplinary action against a  
28 person who holds a license, upon the ground that the applicant or the licensee has  
been convicted of a crime substantially related to the qualifications, functions,

1 and duties of the licensee in question, the record of conviction of the crime shall  
2 be conclusive evidence of the fact that the conviction occurred, but only of that  
3 fact, and the board may inquire into the circumstances surrounding the  
4 commission of the crime in order to fix the degree of discipline or to determine if  
5 the conviction is substantially related to the qualifications, functions, and duties  
6 of the licensee in question.

7 As used in this section, "license" includes "certificate," "permit,"  
8 "authority," and "registration."

9 12. California Code of Regulations, title 16, section 1444, states:

10 A conviction or act shall be considered to be substantially related to the  
11 qualifications, functions or duties of a registered nurse if to a substantial degree it  
12 evidences the present or potential unfitness of a registered nurse to practice in a  
13 manner consistent with the public health, safety, or welfare. Such convictions or  
14 acts shall include but not be limited to the following:

15 (a) Assaultive or abusive conduct including, but not limited to, those  
16 violations listed in subdivision (d) of Penal Code Section 11160.

17 (b) Failure to comply with any mandatory reporting requirements.

18 (c) Theft, dishonesty, fraud, or deceit.

19 (d) Any conviction or act subject to an order of registration pursuant to  
20 Section 290 of the Penal Code.

21 13. California Code of Regulations, Title 16, section 1445 states:

22 . . . .

23 (b) When considering the suspension or revocation of a license on the  
24 grounds that a registered nurse has been convicted of a crime, the board, in  
25 evaluating the rehabilitation of such person and his/her eligibility for a license  
26 will consider the following criteria:

27 (1) Nature and severity of the act(s) or offense(s).

28 (2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole,  
probation, restitution or any other sanctions lawfully imposed  
against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to  
Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

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1                   14.     Section 125.3 of the Code provides, in pertinent part, that the Board may  
2 request the administrative law judge to direct a licensee found to have committed a violation or  
3 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
4 and enforcement of the case.

5                                   **FIRST CAUSE FOR DISCIPLINE**

6     **(June 18, 2007 Criminal Conviction for Driving With a BAC Over .08 on January 15, 2007)**

7                   15.     Respondent has subjected her license to disciplinary action under sections  
8 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is  
9 substantially related to the qualifications, functions, and duties of a registered nurse. The  
10 circumstances are as follows:

11                           a.     On or about June 18, 2007, in a criminal proceeding entitled  
12 *People of the State of California v. Lena M. Thomas*, in San Diego County Superior Court, case  
13 number C267995, Respondent was convicted on her plea of guilty of violating Vehicle Code  
14 section 23152, subdivision (b), driving with a blood alcohol level of .08 or more, a misdemeanor.

15                           b.     As a result of the conviction, on or about June 18, 2007,  
16 Respondent was sentenced to 180 days in the county jail, stayed pending successful completion  
17 of five years summary probation, serve 60 days in the Short Term Work Furlough program,  
18 completion of a MADD impact panel, referral to the Assessment Unit, and pay \$1,756 in fines.  
19 Respondent's driver's license was suspended for six months. In the DUI Addendum to  
20 Respondent's plea agreement, she acknowledged with her initials that she understood the  
21 minimum and maximum sentences for a second offense of driving under the influence.

22                           c.     The facts that led to the conviction were that on or about the early  
23 morning hours of January 15, 2007, a California Highway Patrol (CHP) officer on routine patrol  
24 in El Cajon observed Respondent in a Ford SUV driving approximately 60 mph in a 35 mph  
25 zone, weaving erratically, and nearly striking the curb on several occasions. The CHP officer  
26 pulled Respondent over. When Respondent rolled down her driver side window, the officer  
27 noted a strong odor of alcohol emanating from the vehicle. The officer told Respondent why she  
28 was being stopped. Respondent told the officer she dropped her burrito and that was why she

1 was weaving. When asked for her driver's license, registration, and proof of insurance,  
2 Respondent had a difficult time locating the items. The officer finally had to point out where the  
3 items were located in Respondent's vehicle. The officer noted a strong odor of alcohol on  
4 Respondent's breath, her eyes were red and watery, and her speech was slow and slurred.  
5 Respondent told the officer she had one shot of alcohol two hours earlier. Based on  
6 Respondent's driving pattern, her objective symptoms of intoxication, and her performance on  
7 the horizontal gaze nystagmus test, the officer concluded that Respondent was driving under the  
8 influence of alcohol. Additional CHP officers arrived and Respondent was administered field  
9 sobriety tests, all of which she failed. Respondent submitted to a preliminary alcohol screening  
10 (PAS) test. The samples measured .125% and .106%. Respondent was arrested and transported  
11 to jail. Respondent submitted to additional breath tests that measured .10% and .10%.

#### 12 SECOND CAUSE FOR DISCIPLINE

#### 13 (June 18, 2007 Criminal Conviction for 14 Driving With a BAC Over .08 on February 28, 2007)

15 16. Respondent has subjected her license to disciplinary action under sections  
16 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is  
17 substantially related to the qualifications, functions, and duties of a registered nurse. The  
18 circumstances are as follows:

19 a. On or about June 18, 2007, in a criminal proceeding entitled  
20 *People of the State of California v. Lena M. Thomas*, in San Diego County Superior Court, case  
21 number C269262, Respondent was convicted on her plea of guilty of violating Vehicle Code  
22 section 23152, subdivision (b), driving with a blood alcohol level of .08 or more, a misdemeanor.  
23 Respondent further admitted to a second offense of DUI, pursuant to Vehicle Code section  
24 23540 (as detailed in paragraph 15, above).

25 b. As a result of the conviction, on or about June 18, 2007,  
26 Respondent was sentenced to 365 days in the county jail, stayed pending successful completion  
27 of five years summary probation, serve four days in sheriff's custody, with credit for two days,  
28 complete a MADD impact panel (concurrent to case no. C267995, above), attend and complete a

1 SB38 Multiple Conviction Program, and pay \$2,140 in fines. Respondent's driver's license was  
2 ordered surrendered to the court.

3 c. The facts that led to the conviction were that on or about the  
4 evening of February 28, 2007, a CHP officer observed Respondent driving a Ford SUV on  
5 eastbound Interstate 8 in the area of El Cajon. Respondent's vehicle was in the number 3 lane  
6 and veered onto the right shoulder of the freeway, then swerved back to the left and into the  
7 number 2 lane. Respondent then exited the freeway, drove down the shoulder of the off ramp,  
8 and turned onto a surface street. Respondent's vehicle continued to swerve in and out of her  
9 lane. The CHP officer activated his overhead lights, but Respondent did not yield. Respondent  
10 eventually stopped in a parking lot. The officer told Respondent she was being stopped.  
11 Respondent stated that the reason why she was swerving was that she was trying to retrieve some  
12 clothing from the back seat. The officer noted a strong odor of alcohol on Respondent's breath;  
13 her eyes were red and watery, and her speech was slow and slurred. Respondent could not  
14 produce a driver's license, and gave the officer a California I.D. card. The officer conducted a  
15 records check which revealed that Respondent's driver's license was suspended for a prior DUI.  
16 The officer asked Respondent how many alcoholic beverages she had consumed. Respondent  
17 denied drinking any alcohol. The officer stated he could smell alcohol on her breath;  
18 Respondent again denied consuming alcohol. Respondent later admitted to drinking one glass of  
19 wine. Respondent submitted to a preliminary alcohol screening test; the results were .111 and  
20 .113. Respondent submitted to field sobriety tests; she failed to perform the FST's as  
21 demonstrated and explained by the CHP officer. Respondent was placed under arrest.

### 22 THIRD CAUSE FOR DISCIPLINE

#### 23 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

24 17. Respondent has subjected her license to disciplinary action under sections  
25 2761, subdivision (a), and 2762, subdivision (b) of the Code in that on or about January 15,  
26 2007, and February 28, 2007, as detailed in paragraphs 15 and 16, above, Respondent used  
27 alcoholic beverages to an extent or in a manner dangerous or injurious to herself and the public,  
28 which constitutes unprofessional conduct.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

3 18. Respondent has subjected her license to disciplinary action under sections  
4 2761, subdivision (a), and 2762, subdivision (c) of the Code in that on or about June 18, 2007, as  
5 detailed in paragraphs 15 and 16, above Respondent was convicted of criminal offenses  
6 involving the consumption and/or self-administration of alcohol, which constitutes  
7 unprofessional conduct.


8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
10 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 11 1. Revoking or suspending Registered Nurse License Number 580298,  
12 issued to Lena Marcella Thomas;
- 13 2. Ordering Lena Marcella Thomas to pay the Board of Registered Nursing  
14 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
15 Professions Code section 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.
- 17

18 DATED: 11/26/08

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20   
21 RUTH ANN TERRY, M.P.H., R.N.  
22 Executive Officer  
23 Board of Registered Nursing  
24 Department of Consumer Affairs  
25 State of California  
26 Complainant

27 SD2008802714

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